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Crimes Against Humanity Initiative**

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**Proposed International Convention on the  
Prevention and Punishment of  
Crimes Against Humanity**

*Preamble*

*The States Parties to the present Convention,*

*Conscious* that all people are united by common bonds and share certain common values,

*Affirming* their belief in the need to effectively protect human life and human dignity,

*Reaffirming* their commitment to the purposes and principles of the United Nations, outlined in its Charter, and to the universal human rights norms reflected in the Universal Declaration of Human Rights and other relevant international instruments,

*Mindful* of the millions of people, particularly women and children, who over the course of human history have been subjected to extermination, persecution, crimes of sexual violence, and other atrocities that have shocked the conscience of humanity,

*Emphasizing* their commitment to spare the world community and their respective societies the recurrence of atrocities, by preventing the commission of crimes against humanity, and prosecuting and punishing the perpetrators of such crimes,

*Determined* to put an end to impunity for the perpetrators of crimes against humanity by ensuring their fair and effective prosecution and punishment at the national and international levels,

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\* This version of the text was issued in February 2012 and contains minor corrections of the original text. The corrections are listed in a corrigendum published on 17 February 2012.

*Recognizing* that fair and effective prosecution and punishment of the perpetrators of crimes against humanity necessitates good faith and effective international cooperation,

*Recognizing* that effective international cooperation is dependent upon the capacity of individual States Parties to fulfill their international obligations, and that ensuring the capacity of each State Party to fulfill its obligations to prevent and punish crimes against humanity is in the interest of all States Parties,

*Recalling* that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, including crimes against humanity,

*Recalling* the contributions made by the statutes and jurisprudence of international, national, and other tribunals established pursuant to an international legal instrument, to the affirmation and development of the prevention and punishment of crimes against humanity,

*Recalling* that crimes against humanity constitute crimes under international law, which may give rise to the responsibility of States for internationally wrongful acts,

*Recalling* Article 7 and other relevant provisions of the Rome Statute of the International Criminal Court,

*Declaring* that in cases not covered by the present Convention or by other international agreements, the human person remains under the protection and authority of the principles of international law derived from established customs, from the laws of humanity, and from the dictates of the public conscience, and continues to enjoy the fundamental rights that are recognized by international law,

*Have agreed* as follows:

### **Explanatory Note**

*What follows are cross-references to other international instruments. For full commentary on the Convention and description of the choices made therein, see the Comprehensive History of the Proposed CAH Convention.*

1. *The word “Punishment” tracks the Genocide Convention.*

2. *Preambular paragraphs 1, 4, 6 and 9 draw heavily from the Preamble to the Rome Statute of the International Criminal Court.*
3. *Preambular paragraph 3 draws upon the Preamble to the Enforced Disappearance Convention.*
4. *Preambular paragraphs 5, 6 and 7 include language specifically directed at both prevention and punishment.*
5. *Preambular paragraph 8 is intended to forcefully emphasize the importance of capacity building to ensuring the effective operation of the present Convention.*
6. *The reference in preambular paragraph 10 to “other tribunals established pursuant to an international legal instrument” includes mixed-model tribunals such as the Special Court for Sierra Leone.*
7. *Preambular paragraph 11 acknowledges that crimes against humanity may give rise to the responsibility of States for internationally wrongful acts. This does not mean that State responsibility necessarily attaches. See Article 1 and accompanying Explanatory Note.*
8. *Preambular paragraph 13 is inspired by the Martens Clause appearing in the Preamble to the Hague Convention of 1907 and by Article 10 of the Rome Statute.*

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**Article 1**  
**Nature of the Crime**

Crimes against humanity, whether committed in time of armed conflict or in time of peace, constitute crimes under international law for which there is individual criminal responsibility. In addition, States may be held responsible for crimes against humanity pursuant to principles of State responsibility for internationally wrongful acts.

**Explanatory Note**

1. *States Parties to the present Convention who are also Parties to the Rome Statute are bound by their obligations under that Statute. The obligations arising under the present Convention are therefore compatible with the Rome Statute. In addition, the provisions of the present Convention regulate the bilateral relations between the States Parties to the Rome Statute. The present Convention also offers an opportunity for States that are not parties to the Rome Statute to regulate their bilateral relations with other States, whether Parties to the Rome Statute or not.*
2. *The prohibition against crimes against humanity exists under customary international law and this provision incorporates the customary international law development, which recognizes that crimes against humanity may be committed in time of armed conflict and in time of peace.*
3. *Article 1, like preambular paragraph 11, acknowledges that crimes against humanity may give rise to the responsibility of States for internationally wrongful acts should breaches of the present Convention be attributable to a State Party in accordance with the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts adopted in 2001.*
4. *Specific reference to State responsibility underscores the applicability of State responsibility principles to the present Convention.*

**Article 2**  
**Object and Purposes of the Present Convention**

1. The States Parties to the present Convention undertake to prevent crimes against humanity and to investigate, prosecute, and punish those responsible for such crimes.
2. To these ends, each State Party agrees:
  - (a) To cooperate, pursuant to the provisions of the present Convention, with other States Parties to prevent crimes against humanity;
  - (b) To investigate, prosecute and punish persons responsible for crimes against humanity fairly and effectively;
  - (c) To cooperate, pursuant to the provisions of the present Convention, with other States Parties, with the International Criminal Court if the State is a Party to the Rome Statute, and with other tribunals established pursuant to an international legal instrument having jurisdiction over crimes against humanity, in the fair and effective investigation, prosecution and punishment of persons responsible for crimes against humanity; and
  - (d) To assist other States Parties in fulfilling their obligations in accordance with Article 8 of the present Convention.

**Explanatory Note**

1. *This provision highlights the three core “pillars” of the present Convention: prevention, punishment, and effective capacity building to facilitate such prevention and punishment.*
2. *The reference in paragraph 2(c) to other international tribunals includes the ad hoc tribunals such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, as well as mixed-model tribunals established pursuant to an international legal instrument, such as the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. With regard to this provision’s reference to a State Party cooperating with the International Criminal Court, it should be noted that States Parties to the Rome Statute may have such an obligation. States which are not Party to the Rome Statute*

*have no such obligation absent a referral by the Security Council or voluntary acceptance of the Court's jurisdiction, but may cooperate with the International Criminal Court. This provision recognizes that such States may cooperate with the International Criminal Court, but does not impose an independent obligation to do so.*

3. *The reference in Article 2(d) to assisting "States Parties in fulfilling their obligations" includes the obligations in Article 8 to facilitate State capacity building.*

**Article 3**  
***Definition of Crimes Against Humanity***

1. For the purpose of the present Convention, “crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
  - (a) Murder;
  - (b) Extermination;
  - (c) Enslavement;
  - (d) Deportation or forcible transfer of population;
  - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
  - (f) Torture;
  - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
  - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or in connection with acts of genocide or war crimes;
  - (i) Enforced disappearance of persons;
  - (j) The crime of apartheid;
  - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
  
2. For the purpose of paragraph 1:
  - (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population,

pursuant to or in furtherance of a State or organizational policy to commit such attack;

- (b) “Extermination” includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization,

followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purposes of the present Convention, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

### **Explanatory Note**

1. *The text of paragraphs 1 and 2 incorporates the definition contained in Article 7 of the Rome Statute, with two necessary modifications of language specific to the International Criminal Court in subparagraph 1(h), whereby the following language was used: “gender as defined in paragraph 3,” and “or in connection with acts of genocide or war crimes.”*
2. *No substantive changes to Article 7 of the Rome Statute have been made.*
3. *As used in paragraph 1(k) of the present Convention, “[o]ther inhumane acts of a similar character” could be interpreted, in keeping with Articles II(b) and II(c) of the Genocide Convention, as including acts which cause the same harmful results as the acts listed in subparagraphs (a) through (j).*

***Article 4***  
***Individual Criminal Responsibility***

1. A person who commits a crime against humanity shall be individually responsible and liable for punishment in accordance with the present Convention.
2. In accordance with the present Convention, a person shall be criminally responsible and liable for punishment for a crime against humanity if that person:
  - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
  - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
  - (c) For the purposes of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
  - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
    - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime against humanity; or
    - (ii) Be made in the knowledge of the intention of the group to commit the crime;
  - (e) Directly and publicly incites others to commit crimes against humanity;
  - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under the present Convention for the

attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

3. No provision in the present Convention relating to individual criminal responsibility shall affect the responsibility of States under international law for internationally wrongful acts.

**Explanatory Note**

*This provision draws upon Article 25 of the Rome Statute.*

**Article 5**  
***Responsibility of Commanders and other Superiors***

In addition to other grounds of criminal responsibility under the present Convention for crimes within the jurisdiction of a court:

1. A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of a court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, whereas,
  - (a) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
  - (b) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
  
2. With respect to superior and subordinate relationships not described in paragraph 1, a superior shall be criminally responsible for crimes within the jurisdiction of a court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
  - (a) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes; and
  - (b) The crimes concerned activities that were within the effective responsibility and control of the superior; and
  - (c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

**Explanatory Note**

*This provision is from Article 28 of the Rome Statute.*

**Article 6**  
***Irrelevance of Official Capacity***

1. The present Convention shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under the present Convention, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar a court from exercising its jurisdiction over such a person.

**Explanatory Note**

1. *This language draws heavily upon Article 27 of the Rome Statute. However, in paragraph 2 of this Article, “the Court” has been changed to “a court,” meaning any duly constituted judicial institutions having jurisdiction.*
2. *Paragraph 2 draws upon the dissenting opinion of Judge Van den Wyngaert from the ICJ’s judgment in the Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment of 14 February 2002, and supports a different and more expansive principle than Article 27(2) of the Rome Statute.*

*Article 7*  
***Non-applicability of Statute of Limitations***

Crimes against humanity as defined by the present Convention shall not be subject to any statute of limitations.

**Explanatory Note**

1. *This language draws upon Article 29 of the Rome Statute.*
2. *States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of crimes against humanity as defined in the present Convention and that, where they exist, such limitations shall be abolished.*

**Article 8**  
***Obligations of States Parties***

1. Each State Party shall enact necessary legislation and other measures as required by its Constitution or legal system to give effect to the provisions of the present Convention and, in particular, to take effective legislative, administrative, judicial and other measures in accordance with the Charter of the United Nations to prevent and punish the commission of crimes against humanity in any territory under its jurisdiction or control.

A. Legislation and Penalties

2. Each State Party shall adopt such legislative and other measures as may be necessary to establish crimes against humanity as serious offenses under its criminal law, as well as its military law, and make such offenses punishable by appropriate penalties which take into account the grave nature of those offenses, the harm committed, and the individual circumstances of the offender. In addition, such a person may be barred from holding public rank or office, be it military or civilian, including elected office.
3. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that a military commander or person effectively acting as a military commander shall be criminally responsible for crimes against humanity as set forth in Article 5, paragraph 1.
4. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that, with respect to superior and subordinate relationships not described in paragraph 3, a superior shall be criminally responsible for crimes against humanity as set forth in Article 5, paragraph 2.
5. Each State Party shall adopt such legislative and other measures as may be necessary to ensure in its legal system that the victims of crimes against humanity have the right to equal and effective access to justice, and the right to adequate, effective and prompt reparation for harm suffered, including, where appropriate:
  - (a) Restitution;
  - (b) Compensation;
  - (c) Rehabilitation;

- (d) Satisfaction, including restoration of reputation and dignity;  
and
- (e) Measures to ensure non-repetition.

Each State Party shall ensure that, in the event of the death of a victim of crimes against humanity, his or her heirs shall be entitled to the same rights to equal and effective access to justice, and to adequate, effective and prompt reparation.

6. Each State Party shall adopt such legislative and other measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in crimes against humanity. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offense. Each State Party shall, in particular, develop administrative measures designed to provide reparation to victims, and to ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

B. Investigation and Prosecution

7. Upon receiving information that a person who has committed or who is alleged to have committed crimes against humanity may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.
8. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the person who has committed or who is alleged to have committed crimes against humanity is present shall take the necessary and appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.
9. States Parties shall prosecute or extradite those charged with or suspected of committing crimes against humanity.
10. Each State Party shall ensure that any individual who alleges that he or she has been subjected to crimes against humanity in any part of the territory under its jurisdiction has the right to complain to the

competent legal authorities and to have his or her case promptly and impartially examined by the competent judicial authorities.

11. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning crimes against humanity and, as appropriate, for their relatives and other persons close to them. Such measures may include, *inter alia*, without prejudice to the rights of the accused, including the right to due process:
  - (a) Establishing procedures for the physical protection of such persons such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;
  - (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

C. Prevention

12. Each State Party shall endeavor to take measures in accordance with its domestic legal system to prevent crimes against humanity. Such measures include, but are not limited to, ensuring that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.
13. States Parties may call upon the competent organs of the United Nations to take such action in accordance with the Charter of the United Nations as they consider appropriate for the prevention and punishment of crimes against humanity.
14. States Parties may also call upon the competent organs of a regional organization to take such action in accordance with the Charter of the United Nations as they consider appropriate for the prevention and punishment of crimes against humanity.
15. States Parties shall develop educational and informational programs regarding the prohibition of crimes against humanity including the training of law enforcement officers, military personnel, or other relevant public officials in order to:

- (a) Prevent the involvement of such officials in crimes against humanity;
  - (b) Emphasize the importance of prevention and investigations in relation to crimes against humanity;
16. Each State Party shall ensure that orders or instructions prescribing, authorizing, or encouraging crimes against humanity are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished. Moreover, each State Party shall take the necessary measures to ensure that persons who have reason to believe that crimes against humanity have occurred or are planned to occur, and who report the matter to their superiors or to appropriate authorities or bodies vested with powers of review or remedy are not punished for such conduct.

D. Cooperation

17. States Parties shall cooperate with States or tribunals established pursuant to an international legal instrument having jurisdiction in the investigation, prosecution, and punishment of crimes against humanity.
18. States Parties shall afford one another the greatest measure of assistance and cooperation in the course of any investigation or prosecution of persons alleged to be responsible for crimes against humanity irrespective of whether there exist between said States Parties any treaties on extradition or mutual legal assistance.

E. Capacity Building

19. States Parties shall to the extent possible provide one another capacity building assistance on an individual basis or through the mechanisms outlined in Article 19.

**Explanatory Note**

1. *This provision draws upon similar language from other international criminal law conventions. Paragraph 1 of this provision provides that measures taken by States Parties to prevent and repress crimes against humanity must be in accordance with the Charter of the United Nations. It should also be understood,*

*however, that the obligation to prevent crimes against humanity includes the obligation not to provide aid or assistance to facilitate the commission of crimes against humanity by another State. See ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, Article 16, commentary paragraph (9). See also the ICJ's judgment in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, paragraphs 425-38. This is consistent with Article 1 of the present Convention.*

2. *With regard to paragraph 2, it is understood that the obligations of States Parties apply to all institutions and organs of the State without exception including, inter alia, military courts and any other special proceedings. The language regarding penalties is drawn from Article 4(1) of the Torture Convention. The current provision acknowledges, however, that States Parties may have different obligations arising under regional human rights conventions, and earlier language requiring penalties to be no less severe than those applicable for the most serious crimes of a similar nature has been removed. With regard to barring individuals found responsible for crimes against humanity from holding public rank or office, the permissive "may" was included to avoid possible contradiction with the jurisprudence of the European Court of Human Rights. There is, however, language in Velásquez Rodríguez v. Honduras (Merits), Inter-Am. Ct. H.R., 29 July 1988, Ser. C, No. 4, to support the proposition that persons who abused power to commit crimes against humanity could be barred from holding public office.*
3. *Paragraphs 3 and 4 require States Parties to enact legislation to ensure that military commanders and other superiors are criminally responsible for crimes against humanity committed by subordinates under their effective command and control, or effective authority and control as the case may be, as a result of the commander or superior's failure to exercise control over such subordinates.*
4. *Paragraph 5 draws upon the General Assembly's Resolution adopting Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/RES/60/147 (March 21, 2006).*

5. *In order to avoid impunity or de facto immunity for those persons who act collectively or within a legal structure, States Parties should enact legislation capable of reaching such entities. Paragraph 6 draws heavily upon Article 26 of the UN Convention Against Corruption to oblige States Parties to adopt appropriate legislation and develop administrative measures designed to provide reparation to victims.*
6. *Paragraph 7 is from Article 7(1) of the Terrorist Bombing Convention. It also covers persons who have committed crimes against humanity or alleged to have done so.*
7. *Paragraph 8 is from Article 7(2) of the Terrorist Bombing Convention.*
8. *Paragraph 9 recognizes the obligation of aut dedere aut judicare.*
9. *Paragraph 10 draws upon Article 13 of the Torture Convention but includes language clarifying that the State Party's obligation extends to "any part of the" territory under its jurisdiction.*
10. *Paragraph 11 draws upon Article 32 of the UN Convention Against Corruption.*
11. *The language of paragraph 12 is from Article 20 of the ICCPR.*
12. *Paragraph 13 is from Article VIII of the Genocide Convention. This is consistent with paragraph 1 of the present provision, which provides that any measures taken by States Parties to prevent and punish crimes against humanity must be in accordance with the Charter of the United Nations.*
13. *The term competent used here means the appropriate body within the regional instrument and also those bodies acting within its constituent instrument.*
14. *Paragraphs 15 and 16 oblige States Parties to develop education and training sessions in order to give effect to the obligation to prevent crimes against humanity. These paragraphs draw heavily upon Article 23 of the Enforced Disappearance Convention.*
15. *The Summary of Recommendations of the Genocide Prevention Task Force Report sets forth specific policy measures for education and prevention, which cannot be incorporated into normative provisions of the present Convention. However, if the*

*present Convention has a treaty body that recommends specific measures to States Parties, such a body may use these recommendations.*

- 16. Recognizing that capacity building is one of the core functions of the present Convention, paragraph 19 provides that States Parties, to the extent possible, shall provide one another capacity building assistance. Providing capacity building technical assistance to States Parties is one of the mandated functions of the permanent Secretariat to be established pursuant to Article 19, paragraphs 10 and 11.*
- 17. Although it defines the obligations of States Parties, this article makes no explicit reference to State responsibility. Both preambular paragraph 11 and Article 1 explicitly recognize that crimes against humanity are crimes under international law which may give rise to the responsibility of States for internationally wrongful acts.*

**Article 9**  
***Aut Dedere Aut Judicare (Prosecute or Extradite)***

1. Each State Party shall take necessary measures to establish its competence to exercise jurisdiction over crimes against humanity when the alleged offender is present in any territory under its jurisdiction, unless it extradites him or her to another State in accordance with its international obligations or surrenders him or her to the International Criminal Court, if it is a State Party to the Rome Statute, or to another international criminal tribunal whose jurisdiction it has recognized.
2. In the event that a State Party does not, for any reason not specified in the present Convention, prosecute a person suspected of committing crimes against humanity, it shall, pursuant to an appropriate request, either surrender such a person to another State willing to prosecute fairly and effectively, to the International Criminal Court, if it is a State Party to the Rome Statute, or to a competent international tribunal having jurisdiction over crimes against humanity.

**Explanatory Note**

1. *Paragraph 1 draws upon Article 9(2) of the Enforced Disappearance Convention.*
2. *Paragraph 2 reflects the principle aut dedere aut judicare.*
3. *With regard to this provision's reference to a State Party surrendering an accused individual to the International Criminal Court, it should be noted that States Parties to the Rome Statute may have such an obligation. States which are not Party to the Rome Statute may have no such obligation, but may cooperate with the International Criminal Court. This provision recognizes that such States may cooperate with the International Criminal Court, but does not impose an independent obligation to do so.*

***Article 10***  
***Jurisdiction***

1. Persons alleged to be responsible for crimes against humanity shall be tried by a criminal court of the State Party, or by the International Criminal Court, or by an international tribunal having jurisdiction over crimes against humanity.
2. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over persons alleged to be responsible for crimes against humanity:
  - (a) When the offense is committed in any territory under its jurisdiction or onboard a ship or aircraft registered in that State or whenever a person is under the physical control of that State; or
  - (b) When the person alleged to be responsible is one of its nationals; or
  - (c) When the victim is one of its nationals and the State Party considers it appropriate.
3. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offense of crimes against humanity when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.
4. The present Convention does not preclude the exercise of any other competent criminal jurisdiction compatible with international law and which is exercised in accordance with national law.
5. For purposes of cooperation, jurisdiction shall be deemed to exist whenever the person responsible for, or alleged to be responsible for, crimes against humanity is present in the State's territory or the State Party is in a position to exercise physical control over him or her.

**Explanatory Note**

1. *It is understood that the reference in paragraph 1 to "an international tribunal having jurisdiction," is with respect to any*

*State Party that shall have accepted the jurisdiction of such tribunal. This provision also recognizes the principle of complementarity embodied in the Rome Statute.*

2. *Paragraph 2 draws upon the language of Article 9(1) of the Enforced Disappearance Convention. This provision is intended to avoid litigation over the scope of territorial application.*
3. *Paragraph 3 draws upon Article 9(2) of the Enforced Disappearance Convention and Article 5(2) of the Torture Convention.*
4. *Paragraph 4 draws upon Article 9(3) of the Enforced Disappearance Convention.*
5. *Paragraph 5 is intended to ensure that there exists no jurisdictional gap in a State Party's capacity to exercise jurisdiction over a person who is responsible for, or is alleged to be responsible for, crimes against humanity, and would apply to persons transiting a State Party's territory even where the State Party is not in a position to exercise physical control over the person.*

***Article 11***  
***Evidence***

1. The rules of evidence required for prosecution shall be those in existence under the national laws of the State Party conducting the investigation, prosecution, or post-trial proceedings but shall in no way be less stringent than those that apply in cases of similar gravity under the law of said State Party.
2. States Parties may, for purposes of the present Convention, recognize the validity of evidence obtained by another State Party even when the legal standards and procedure for obtaining such evidence do not conform to the same standards of a given State Party. Such non-conformity shall not be grounds for exclusion of evidence, provided that the evidence is deemed credible and that it is obtained in conformity with international standards of due process. This paragraph shall apply to all aspects of the present Convention including, but not limited to: extradition, mutual legal assistance, transfer of criminal proceedings, enforcement of judicial orders, transfer and execution of foreign penal sentences, and recognition of foreign penal judgments.
3. In relation to the collection of evidence, States Parties shall endeavor to conform with international standards of due process.

**Explanatory Note**

1. *Paragraph 1 recognizes that in multilateral and bilateral treaties the law of evidence that applies is the law of the forum State.*
2. *In connection with mutual legal assistance and as currently reflected in Article 13 and Annex 2, it is also possible for requesting States to ask that specific conditions be employed or procedures followed in the taking of evidence by the requested State. Paragraph 2 permits States to recognize the validity of evidence obtained by another State Party, even where the requested conditions or procedures are not followed, provided that the evidence is deemed credible and that it is obtained in conformity with international standards of due process, including the obligation under Article 15 of the Torture Convention, which would exclude any statement made as a result of torture.*
3. *Paragraph 3 obliges States to endeavor to conform to international standards of due process in the collection of evidence.*

***Article 12***  
***Extradition***

States Parties shall afford one another the greatest measure of assistance in connection with extradition requests made with respect to crimes against humanity in accordance with the provisions of Annex 2.

**Explanatory Note**

*The obligation to extradite or prosecute persons responsible for, or alleged to be responsible for, crimes against humanity is found in Article 8, paragraph 9 and Article 9 of the present Convention. Applicable modalities are provided in Annex 2.*

***Article 13***  
***Mutual Legal Assistance***

States Parties shall afford one another the greatest measure of assistance in connection with investigations, prosecutions and judicial proceedings brought with respect to crimes against humanity in accordance with the provisions of Annex 3.

**Explanatory Note**

*The modalities by which States Parties are obliged to afford one another mutual legal assistance are outlined in Annex 3, which is drawn from the mutual legal assistance provisions of Article 46 of the UN Convention Against Corruption.*

***Article 14***  
***Transfer of Criminal Proceedings***

States Parties having jurisdiction in a case involving crimes against humanity may engage in a transfer of criminal proceedings in accordance with Annex 4.

**Explanatory Note**

*The modalities by which States Parties may engage in a transfer of criminal proceedings under the present Convention are contained in Annex 4, which is based on the European Transfer of Proceedings Convention and its Protocol.*

***Article 15***  
***Transfer of Convicted Persons for the Execution of Their Sentences***

States Parties may transfer to one another a person convicted of crimes against humanity in their respective legal systems for purposes of the execution of such convicted person's sentence in accordance with the provisions of Annex 5.

**Explanatory Note**

*The modalities by which States Parties may transfer persons convicted of crimes against humanity for the execution of their sentences are outlined in Annex 5, which is based on the European Convention on the Transfer of Sentenced Persons as well as the Inter-American Criminal Sentences Convention.*

**Article 16**  
***Enforcement of the Effects of States Parties' Penal Judgments***

A State Party may recognize and enforce the effects of another State Party's penal judgments in accordance with the provisions of Annex 6.

**Explanatory Note**

*This provision acknowledges that States may recognize and enforce the effects of another State Party's penal judgments. The modalities for such recognition and enforcement are found in Annex 6, which is based on the European Convention on the International Validity of Criminal Judgments.*

***Article 17***  
***Ne Bis in Idem***

A person effectively prosecuted for crimes against humanity and convicted or acquitted cannot be prosecuted by another State Party for the same crime based on the same or substantially same facts underlying the earlier prosecution.

**Explanatory Note**

1. *This provision recognizes the ne bis in idem principle, which is found in many international instruments, including Article 14(7) of the ICCPR, Article 20 of the Rome Statute, Article 10 of the ICTY Statute, and Article 9 of the ICTR Statute.*
2. *This provision recognizes that for the ne bis in idem principle to apply as a bar to a subsequent prosecution, the first prosecution must have been conducted “effectively.” Pursuant to Annex 1(b), “effectively” means diligently, independently and impartially in a manner not designed to shield the person concerned from criminal responsibility for crimes against humanity and consistent with an intent to bring the person concerned to justice, bearing in mind respect for the principle of the presumption of innocence.*

**Article 18**  
**Non-refoulement**

1. No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that such a person would be in danger of being subjected to crimes against humanity.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

**Explanatory Note**

1. *This provision draws upon Article 16 of the Enforced Disappearance Convention, which is in turn drawn from Article 8 of the Enforced Disappearance Declaration. A similar obligation, specific to torture, is found in the Torture Convention.*
2. *Paragraph 1 also draws upon Article 3(1) of the Torture Convention.*
3. *The non-refoulement provision of the present Convention is limited to situations involving crimes against humanity because such crimes form the core subject matter of the present Convention. In this regard, the present Convention follows the approach of the Enforced Disappearance Convention and the Torture Convention.*

***Article 19***  
***Institutional Mechanisms***

A. Conference of States Parties

1. A Conference of States Parties to the present Convention is hereby established to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in the present Convention and to promote and review its implementation.
2. The Secretary-General of the United Nations shall convene the Conference of States Parties not later than one year following the entry into force of the present Convention. Thereafter, regular meetings of the Conference of States Parties shall be held every three years. With regard to the first convening of the Conference of States Parties by the Secretary-General of the United Nations, the Secretary-General shall provide the necessary secretariat services to the Conference of States Parties to the Convention. The secretariat provided by the Secretary-General of the United Nations shall:
  - (a) Assist the Conference of States Parties in carrying out the activities set forth in this article and make arrangements and provide the necessary services for the sessions of the Conference of States Parties;
  - (b) Upon request, assist States Parties in providing information to the Conference of States Parties as envisaged in paragraphs 5 and 6; and
  - (c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.
3. Each State Party shall have one representative in the Conference who may be accompanied by alternates and advisers. The Conference of States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules concerning the admission and participation of observers and the payment of expenses incurred in carrying out those activities.

B. Committee

4. For the purpose of achieving the objectives set forth in paragraph 1 of this article, the Conference of States Parties shall establish the “Committee Established Pursuant to the International Convention on

the Prevention and Punishment of Crimes Against Humanity” (the Committee).

5. The Committee shall have ten members. The members of the Committee shall be experts in matters relevant to the present Convention who are designated by the States Parties and elected by the Conference of States Parties. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years. Immediately after the first election, the names of these five members shall be chosen by lot in a manner designated by the Conference of States Parties.
6. The Committee shall establish its own rules of procedure and shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1, including:
  - (a) Facilitating activities by and between States Parties under the present Convention;
  - (b) Facilitating the exchange of information among States Parties on successful practices for preventing and punishing crimes against humanity;
  - (c) Cooperating with relevant international and regional organizations and mechanisms and non-governmental organizations;
  - (d) Making appropriate use of relevant information produced by other international and regional mechanisms for preventing and punishing crimes against humanity in order to avoid unnecessary duplication of work;
  - (e) Making recommendations to improve the present Convention and its implementation;
  - (f) Taking note of the technical assistance requirements of States Parties with regard to the implementation of the present Convention and recommending any action it may deem necessary in that respect;
  - (g) Establishing financial rules and regulations for the functioning of the Committee and the Secretariat; and

- (h) Managing the Voluntary Trust Fund established by the States Parties pursuant to paragraph 14.
7. For the purpose of paragraph 6, the Committee shall acquire the necessary knowledge of the measures taken by States Parties in implementing the present Convention and the difficulties encountered by them in doing so through information provided by States Parties and through such supplemental review mechanisms as may be established by the Committee.
  8. The Committee shall examine the most effective way of receiving and acting upon information, including, *inter alia*, information received from States Parties and from competent international organizations. Input received from relevant non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Committee may also be considered. Each State Party shall provide the Committee with information on its programs, plans and practices to implement the present Convention, including:
    - (a) The adoption of national implementing legislation;
    - (b) The establishment of administrative mechanisms fulfilling the prevention requirements contained in the present Convention;
    - (c) Reports on data gathering regarding its obligations under the present Convention including, but not limited to, the number of allegations, investigations, prosecutions, convictions, extraditions and mutual legal assistance requests.
  9. The information provided by the States Parties shall be considered by the Committee, which shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them on its own initiative or at the request of the Committee. The Committee may also request States Parties to provide additional information on the implementation of the present Convention.
  10. The Committee shall establish a permanent Secretariat to facilitate its activities, procedures and methods of work to achieve the objectives set forth in paragraphs 1, 5, 6 and 7. The Committee may establish such other subsidiary bodies as may be necessary.

C. Secretariat

11. The Secretariat's functions shall be:
- (a) Providing technical assistance to States in the process of acceding to the present Convention;
  - (b) Providing technical assistance, including appropriate capacity building assistance, to States Parties in fulfilling their obligations under the present Convention;
  - (c) Disseminating information between States Parties;
  - (d) Facilitating mutual legal assistance and other aspects of cooperation between States Parties, including facilitating cooperation in matters involving the appearance of witnesses and experts in judicial proceedings, and in effectively protecting such persons;
  - (e) Receiving and compiling information from States Parties as required by the Committee; and
  - (f) Ensuring the necessary coordination with the secretariats of relevant international and regional organizations.
12. The Secretariat shall be headquartered at \_\_\_\_\_.

D. Expenses

13. The expenses of the Conference of States Parties, the Committee, the Secretariat, and any other subsidiary bodies shall be provided from the following sources:
- (a) Contributions of States Parties assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based;
  - (b) Funds contributed on a voluntary basis by governments, inter-governmental organizations, non-governmental organizations, private organizations, foundations, and individuals.

E. Voluntary Trust Fund

14. The States Parties shall establish a Voluntary Trust Fund managed by the Committee to provide States Parties with technical assistance and

capacity building needed in support of efforts to carry out the obligations arising under the present Convention.

### **Explanatory Note**

1. *This article draws heavily upon Articles 112, 116 and 117 of the Rome Statute, Articles 63 and 64 of the UN Convention Against Corruption, and Articles 26 and 29 of the Enforced Disappearance Convention.*
2. *Paragraph 2 of this provision will be subject to approval by the competent organs of the United Nations, including reimbursement by the States Parties to the United Nations for expenses incurred by the organization.*
3. *The experience of States Parties with this body and its functions will determine how it will evolve in the future and what role it will assume over and above the mandate mentioned in the Convention such as fact-finding for purposes of developing an early warning system.*
4. *With regard to paragraph 12, an appropriate Headquarters Agreement will need to be negotiated with the host country, subject to approval by the Conference of States Parties.*

***Article 20***  
***Federal States***

The provisions of the present Convention shall apply to all parts of federal States without any limitations or exceptions.

**Explanatory Note**

*This language is from Article 41 of the Enforced Disappearance Convention.*

***Article 21***

***Signature, Ratification, Acceptance, Approval, or Accession***

1. The present Convention shall be open for signature by all States at \_\_\_\_\_ until \_\_\_\_\_.
2. The present Convention shall be subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.
3. The present Convention shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Explanatory Note**

*This article draws upon Article 125 of the Rome Statute.*

***Article 22***  
***Entry into Force***

1. The present Convention shall enter into force on the thirtieth (30th) day following the date of deposit of the twentieth (20th) instrument of ratification, acceptance, approval, or accession with the Secretary-General of the United Nations.
  
2. For each State ratifying, accepting, approving, or acceding to the present Convention after the deposit of the twentieth (20th) instrument of ratification, acceptance, approval, or accession, the Convention shall enter into force on the thirtieth (30th) day after the deposit by such State of its instrument of ratification, acceptance, approval, or accession.

**Explanatory Note**

*Paragraphs 1 and 2 draw upon Article 126 of the Rome Statute.*

***Article 23***  
***Reservations***

No reservations may be made to the present Convention.

**Explanatory Note**

1. *This language is from Article 120 of the Rome Statute.*
2. *It is understood that national legislative systems vary and that these variances will apply to modalities of aut dedere aut judicare and that States may make declarations about their respective national legal systems and procedures. This applies particularly to Articles 9, 10, 11, 12, 13, 14, 15, and 16 of the present Convention.*

***Article 24***  
***Amendment***

1. Any State Party to the present Convention may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General of the United Nations, who shall promptly circulate it to all States Parties.
2. No sooner than three months from the date of notification, the Conference of States Parties, at its next meeting, shall, by a majority of those present and voting, decide whether to take up the proposal. The Conference may deal with the proposal directly or convene a Review Conference if the issue involved so warrants.
3. The adoption of an amendment at a meeting of the Conference of States Parties or at a Review Conference on which consensus cannot be reached shall require a two-thirds majority of States Parties.
4. Amendments to the present Convention shall enter into force one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by two-thirds of the States Parties and shall be binding on those States Parties that have accepted them; other States Parties who have not accepted the amendments shall continue to be bound by the provisions of the present Convention and any earlier amendments that they have accepted.
5. The Secretary-General of the United Nations shall circulate to all States Parties any amendment adopted at a meeting of the Conference of States Parties or at a Review Conference.

**Explanatory Note**

*This article draws heavily upon Article 121 of the Rome Statute.*

**Article 25**  
**Interpretation**

The terms of the present Convention shall also be interpreted in the light of internationally recognized human rights standards and norms.

**Explanatory Note**

*It is self-evident that the customary international law of treaty interpretation applies (codified in the Vienna Convention on the Law of Treaties). This article is also intended to ensure that the terms of the present Convention are interpreted in accordance with the regional human rights obligations of States Parties under the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights, as well as in accordance with specific obligations established by treaty bodies with respect to different human rights conventions.*

**Article 26**  
***Dispute Settlement Between States Parties***

Any dispute between two or more States Parties concerning the interpretation or application of the present Convention, including those relating to the responsibility of a State for alleged breaches thereof, that cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice for a final and binding decision by a request in conformity with the Statute of the Court.

**Explanatory Note**

*This provision draws upon Article 30(1) of the Torture Convention, Article 42(1) of the Enforced Disappearance Convention, and Article IX of the Genocide Convention.*

*Article 27*  
*Authentic Texts*

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian, and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

**Explanatory Note**

*This language is from Article 128 of the Rome Statute.*

***Annex 1***  
***Use of Terms***

For the purposes of the present Convention:

- (a) “Fair,” “fairly” or “fairness” means in accordance with norms of due process recognized by international law, consistent with the minimum guarantees in criminal proceedings, as contained in the International Covenant on Civil and Political Rights;
- (b) “Effective,” “effectively” or “effectiveness” means diligently, independently and impartially in a manner not designed to shield the person concerned from criminal responsibility for crimes against humanity and consistent with an intent to bring the person concerned to justice, bearing in mind respect for the principle of the presumption of innocence.
- (c) “Person” means a natural person or legal entity.

**Explanatory Note**

*The definitions of “fair” and “effective” in paragraphs (a) and (b) are designed to ensure that States may not use sham investigations or legal proceedings to thwart their obligations to investigate, prosecute or extradite. The definition in paragraph (b) draws heavily upon the ne bis in idem principle articulated in Article 10 of the ICTY Statute and Article 20 of the Rome Statute.*

***Annex 2***  
***Extradition***

A. Crimes Against Humanity as Extraditable Offenses

1. Crimes against humanity shall be deemed to be included as an extraditable offense in any extradition treaty existing between States Parties before the entry into force of the present Convention.
2. States Parties undertake to include crimes against humanity as an extraditable offense in any extradition treaty subsequently to be concluded between them.

B. Legal Basis for Extradition

3. In the absence of relevant national legislation or other extradition relationship, States Parties shall consider the present Convention as the legal basis for extradition in order to fulfill their obligation to prosecute or extradite persons alleged to be responsible for crimes against humanity pursuant to Article 8, paragraph 9 and Article 9.

C. Modalities of Extradition

4. In the absence of relevant national legislation or other extradition relationship, States Parties may use all or some of the following modalities provided in this Annex.

D. Grounds for Refusal of Extradition

5. For the purposes of extradition between States Parties, crimes against humanity shall not be regarded as a political offense or as an offense connected with a political offense. Accordingly, a request for extradition for crimes against humanity may not be refused on this ground alone, nor shall extradition be barred by claims of official capacity subject to Article 6, paragraph 1.
6. It shall be grounds for denial of extradition that the person sought is being tried for crimes against humanity or for another crime under the laws of the requested State based on facts which constitute one or more of the constituent acts listed in Article 3, paragraph 1, or that the person sought has already been tried for such crime or crimes and acquitted or convicted, and has fulfilled the penalty for said conviction. It shall also be grounds for denial of extradition if the requested State Party ascertains that the person sought for extradition

may be subjected to crimes against humanity in the requesting State as provided for in Article 18.

7. It shall be grounds for denial of extradition that the requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that the person's right to a fair and impartial trial may be prejudiced for any of those reasons.
8. It shall be grounds for denial of extradition that the judgment of the requesting State has been rendered *in absentia*, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defense, and the person has not or will not have the opportunity to have the case retried in his or her presence.
9. It shall be grounds for denial of extradition that the person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in Article 14 of the International Covenant on Civil and Political Rights.
10. Extradition may be refused if the offense of crimes against humanity carries a penalty not provided for in the requested State, unless the requesting State gives such assurance as the requested State considers sufficient that the penalty not provided for in the requested State will not be imposed or, if imposed, will not be carried out.

E. Rule of Specialty

11. No person extradited for crimes against humanity shall be tried in the requesting State for any other crime than that for which extradition was granted unless the requested State or person extradited so consents.

F. Multiple Requests for Extradition

12. In cases of multiple requests for extradition, the State Party in whose territory the person alleged to be responsible for crimes against humanity has been found may take into consideration the following factors in determining priority:
  - (a) The territory where one or more of the constitutive acts considered part of the crime has taken place;
  - (b) The nationality of the offender(s);

- (c) The nationality of the victim(s); and
- (d) The forum most likely to have the greater ability and effectiveness in carrying out the prosecution, and which provides greater fairness and impartiality.

### **Explanatory Note**

1. *Paragraph 1 draws upon Article 13(2) of the Enforced Disappearance Convention.*
2. *Paragraph 2 draws upon Article 13(3) of the Enforced Disappearance Convention.*
3. *Paragraph 3 ensures that, in the absence of relevant national legislation or an existing bilateral or multilateral extradition relationship, the present Convention shall provide the legal basis upon which a State Party may fulfill its obligation to extradite or prosecute in accordance with Article 8, paragraph 9 and Article 9.*
4. *Paragraph 4 ensures that, in the absence of relevant national legislation or an existing bilateral or multilateral extradition relationship, the present Convention may define the modalities by which a State Party may fulfill its obligation to extradite or prosecute in accordance with Article 8, paragraph 9 and Article 9.*
5. *Paragraph 5 draws upon Article 13(1) of the Enforced Disappearance Convention with regard to political offenses. With regard to claims of official capacity, this paragraph is consistent with Article 6, paragraph 1 of the present Convention, which precludes any official capacity as an applicable defense.*
6. *With regard to paragraph 6, in order to uphold the substance of the principle ne bis in idem, it should not matter whether a State or a State Party has tried a person. In any event, the requested State will have to determine whether the prosecution was fair and effective.*
7. *Paragraph 7 draws upon Article 3(b) of the UN Model Treaty on Extradition.*
8. *Paragraph 8 draws upon Article 3(g) of the UN Model Treaty on Extradition.*

9. *Paragraph 9 is draws upon Article 3(f) of the UN Model Treaty on Extradition.*
10. *Paragraph 10 is similar to, but broader than, Article 4(d) of the UN Model Treaty on Extradition, and recognizes that States may have differing obligations with respect to regional human rights treaties.*
11. *Paragraphs 6 through 9 provide mandatory grounds for refusal of extradition, while paragraph 10 provides an optional ground for refusal. Potential additional optional grounds for refusal are provided in the UN Model Treaty on Extradition, Article 4.*

***Annex 3***  
***Mutual Legal Assistance***

1. Legal assistance between States Parties shall be afforded to the fullest extent possible under relevant laws, treaties, agreements, and arrangements of the requested State Party and may be afforded on the basis of the present Convention and without the need for reliance on a bilateral treaty or national legislation.

A. Types of Mutual Legal Assistance

2. Legal assistance to be afforded in accordance with this Annex may be requested for any of the following purposes:
  - (a) Taking evidence or statements from persons;
  - (b) Effecting service of judicial documents;
  - (c) Executing searches and seizures, and freezing of assets;
  - (d) Examining objects and sites;
  - (e) Providing information, evidentiary items and expert evaluations;
  - (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
  - (g) Identifying or tracing proceeds of crime, property instrumentalities or other things for evidentiary purposes;
  - (h) Facilitating the voluntary appearance of persons in the requesting State Party;
  - (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

B. Transmission of Information

3. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to crimes against humanity to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and

criminal proceedings or could result in a request formulated by the latter State Party pursuant to the present Convention.

4. The transmission of information pursuant to paragraph 3 of this Annex shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

C. Obligations Under Other Applicable Treaties

5. The provisions of this Annex shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

D. Transfer of Detained Persons

6. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to crimes against humanity may be transferred if the following conditions are met:
  - (a) The person freely gives his or her informed consent;
  - (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties deem appropriate.

E. Form of Requests for Mutual Legal Assistance

7. Requests for legal assistance shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its

instrument of ratification, acceptance or approval of or accession to the present Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

8. A request for legal assistance shall contain:
  - (a) The identity of the authority making the request;
  - (b) The subject matter and nature of the investigation, prosecution or judicial proceedings to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceedings;
  - (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
  - (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
  - (e) Where possible, the identity, location and nationality of any person concerned; and
  - (f) The purpose for which the evidence, information or action is sought.
9. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

F. Execution of Requests for Mutual Legal Assistance

10. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary with the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

G. Witnesses

11. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not

possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

H. Limited Use of Information

12. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

I. Refusal of Requests for Mutual Legal Assistance

13. States Parties shall not decline to render mutual legal assistance pursuant to this Annex on the ground of bank secrecy.
14. Legal assistance may be refused if the request is not made in conformity with the provisions of this Annex.
15. Legal assistance may not be refused based upon claims of official capacity subject to Article 6, paragraph 1, or that the crime was of a political nature.
16. Legal assistance shall be refused if the person who is the subject of the request is being tried for crimes against humanity or for another crime under the laws of the requested State based on facts which constitute one or more of the constituent acts listed in Article 3, paragraph 1, or if the person has already been tried for such crime or crimes and acquitted or convicted, and has fulfilled the penalty for said conviction. It shall also be grounds for refusal of mutual legal assistance if the requested State Party ascertains that the person who is the subject of the request may be subjected to crimes against humanity in the requesting State.

**Explanatory Note**

1. *Much of the text of this Annex draws upon the mutual legal assistance provisions of Article 46 of the UN Convention Against Corruption.*
2. *For additional modalities of effectuating mutual legal assistance, States Parties may look to model legislation such as the UN Model Treaty on Mutual Assistance in Criminal Matters or to the relevant conventions of regional bodies.*

***Annex 4***  
***Transfer of Criminal Proceedings***

1. Whenever a State Party, having jurisdiction over a person charged with crimes against humanity, agrees with another State Party, also having jurisdiction pursuant to Article 10, to cede jurisdiction and to transfer the record of the proceedings undertaken to the requesting State Party, the transfer procedure shall be established by agreement between their respective competent authorities. Such a procedure shall be based on the present Convention and shall not require the existence of a bilateral treaty between the respective States Parties or national legislation.
2. A transfer may occur when it is in the best interest of justice, and when it enhances fair and effective prosecution.
3. A State Party may request another State Party to take over proceedings in any one or more of the following cases:
  - (a) If the suspected person is ordinarily resident in the requested State;
  - (b) If the suspected person is a national of the requested State or if that State is his or her State of origin;
  - (c) If the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;
  - (d) If proceedings for the same or other offenses are being taken against the suspected person in the requested State;
  - (e) If it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;
  - (f) If it considers that the enforcement in the requested State of a sentence, if one were passed, is likely to improve the prospects for the social rehabilitation of the person sentenced;
  - (g) If it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his or her presence in person at the hearing of proceedings in the requested State can be ensured;

- (h) If it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so.

**Explanatory Note**

1. *This provision draws upon the European Transfer of Proceedings Convention and includes in paragraph 3 the situations listed in Article 8 of that convention defining when States may make such transfer requests.*
2. *Grounds for refusal have not been included in light of the diversity of national legal systems.*

*Annex 5*

*Transfer of Convicted Persons for the Execution of Their Sentences*

1. States Parties may transfer to one another a person convicted of crimes against humanity in their respective legal systems for purposes of the execution of such convicted person's sentence on the basis of the present Convention and without the need for a bilateral treaty between the States Parties or national legislation.
2. The transfer shall require the consent of the transferring State Party, the transferred-to State Party, and the person to be transferred, who shall waive any rights to challenge his or her conviction in the transferring State, along with the agreement of the transferred-to State Party to execute the sentence as decided in the transferring State in accordance with its penal laws and applicable regulations.
3. Conditional release and other measures provided for in the transferred-to State shall be in accordance with its laws and applicable regulations. No pardon or other similar measure of clemency, however, shall be extended to the transferred person without the consent of the transferring State.

**Explanatory Note**

*This provision draws upon the Convention on the Transfer of Sentenced Persons as well as the Inter-American Criminal Sentences Convention. States Parties may also wish to look to model legislation of relevant organizations, to regional directives, and to sub-regional agreements.*

***Annex 6***

***Enforcement of the Effects of States Parties' Penal Judgments***

1. Recognition and enforcement of a State Party's penal judgment shall be based on the present Convention and shall not require a bilateral treaty between the respective States Parties, or national legislation, other than that which may be required under the Constitution or national law of each State Party to implement the present Convention.
2. Cooperation and assistance between States Parties, particularly with regards to giving effect to Annexes 3 through 6, and which, in accordance with the laws of a given State Party, are barred if predicated on a foreign penal judgment or which require a treaty or national legislation having for effect the recognition of a foreign penal judgment, shall instead rely on the present Convention with respect to the enforcement or reliance upon a foreign penal judgment.
3. A State Party may, however, refuse to execute, enforce, give effect to, or rely on another State Party's penal judgments if the judgment in question was obtained by fraud or duress, or was issued on the basis of procedures that violate international standards of due process, or are in conflict with domestic public policy.

**Explanatory Note**

*This provision draws upon the European Convention on the International Validity of Criminal Judgments.*

**International Convention on the  
Prevention and Punishment of  
Crimes Against Humanity**

*Table of Abbreviations and Instruments Cited in the Convention and Explanatory  
Notes*

<b>African Charter</b>	<b>African [Banjul] Charter on Human and People's Rights</b> , 1982, 1520 U.N.T.S. 217 (entry into force Oct. 21, 1986).
<b>Apartheid Convention</b>	<b>International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i></b> , 1973, G.A. Res. 3068 (XXVIII) of Nov. 30, 1973, UN Doc. A/9030, 1015 U.N.T.S. 243 (entry into force July 18, 1976).
<b>American Convention on Human Rights</b>	<b>American Convention on Human Rights</b> , 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entry into force July 18, 1978).
<b>CAH</b>	Crime(s) Against Humanity.
<b>Comprehensive History of the Proposed CAH Convention</b>	<b>Leila Nadya Sadat, <i>A Comprehensive History of the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity</i>, in FORGING A CONVENTION FOR CRIMES AGAINST HUMANITY</b> (Cambridge Univ. Press, 2011). For the website of the Washington University School of Law Whitney R. Harris World Law Institute Crimes Against Humanity Initiative, see <a href="http://law.wustl.edu/crimesagainsthumanity/">http://law.wustl.edu/crimesagainsthumanity/</a> .
<b>European Convention on the Transfer of Sentenced Persons</b>	<b>Convention on the Transfer of Sentenced Persons</b> , 1983, Europ. T.S. No. 112, Strasbourg (Mar. 21, 1983) (entry into force July 1, 1985).
<b>ECHR</b>	<b>European Convention for the Protection of Human Rights and Fundamental Freedoms</b> , 1950, Europ. T.S. No. 5, 213 U.N.T.S. 222, Rome, (Sep. 4, 1950) (entry into force Sep. 3, 1953).
<b>Enforced Disappearance Convention</b>	<b>International Convention on the Protection of All Persons from Enforced Disappearance</b> , 2006, G.A. Res. 61/177, UN GAOR 61 <sup>st</sup> Sess., Supp. No. 49, at 207, UN Doc. A/RES/61/177 (Dec. 20, 2006) (not yet in force).
<b>Enforced Disappearance Declaration</b>	<b>Declaration on the Protection of All Persons from Enforced Disappearance</b> , 1992, G.A. Res. 47/133, UN GAOR 47 <sup>th</sup> Sess., Supp. No. 49, at 207, UN Doc. A/47/49 (1992).

<b>European Convention on the International Validity of Criminal Judgments</b>	<b>European Convention on the International Validity of Criminal Judgments</b> , 1970, Europ. T.S. No. 70, Criminal Judgments, The Hague, (May 28, 1970) (entry into force July 26, 1974).
<b>European Evidence Warrant</b>	<b>Council Framework Decision on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters</b> , 2008, O.J. (L 350) 72, Council Framework Decision 2008/978/JHA (entry into force Feb. 8, 2009).
<b>European Mutual Assistance Convention</b>	<b>European Convention on Mutual Assistance in Criminal Matters</b> , 1959, Europ. T.S. No. 30, Mutual Assistance in Criminal Matters, Strasbourg, (April 20, 1959) (entry into force 12 June 1962).
<b>European Statutory Limitations Convention</b>	<b>European Convention on the Non-Applicability of Statutory Limitation to Crimes against humanity and War Crimes</b> , 1974, Europ. T.S. No. 82, Crimes against humanity and War Crimes, Strasbourg (Jan. 25, 1974) (entry into force June 26, 2003).
<b>European Transfer of Proceedings Convention</b>	<b>European Convention on the Transfer of Proceedings in Criminal Matters</b> , 1972, Europ. T.S. No. 73, Criminal Proceedings, Strasbourg, (May 15, 1972) (entry into force Mar. 30, 1978).
<b>Genocide Convention</b>	<b>Convention on the Prevention and Punishment of the Crime of Genocide</b> , 1951, G.A. Res. 260 (III), UN Doc. No. A/180, 78 U.N.T.S. 277 (Dec. 9, 1948) (entry into force Jan. 12, 1951).
<b>Genocide Prevention Task Force Report</b>	<b>Madeleine Albright &amp; William Cohen, Preventing Genocide: A Blueprint for U.S. Policymakers (2008)</b> , available at: <a href="http://www.usip.org/genocide_taskforce/report.html">http://www.usip.org/genocide_taskforce/report.html</a> .
<b>Hijacking Convention</b>	<b>Convention for the Suppression of Unlawful Seizure of Aircraft</b> , 1970, (The Hague, Dec. 18, 1970), T.I.A.S. No. 7192, 22 U.S.T. 1641, 860 U.N.T.S. 105 (entry into force Oct. 14, 1971).
<b>ICCPR</b>	<b>International Covenant on Civil and Political Rights</b> , 1976, G.A. Res. 2200 (XXI), Supp. No. 16, UN Doc. A/6316 (Dec. 16, 1966) (entry into force Mar. 23, 1976).
<b>ICJ</b>	<b>International Court of Justice</b>

<p><b>ICTR Statute</b></p>	<p><b>Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994</b>, 1994, S.C.Res. 955, UN Doc. S/RES/955 (Nov. 8, 1994), as amended by S.C.Res. 1431, UN Doc. S/RES/1431 (Aug. 14, 2002).</p>
<p><b>ICTY Statute</b></p>	<p><b>Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991</b>, UN Doc. S/25704 at 36, annex (1993) &amp; S/25704/Add.1 (1993), adopted by Security Council on May 25, 1993, UN Doc. S/RES/827 (1993).</p>
<p><b>ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts</b></p>	<p><b>Report of the International Law Commission on the work of its fifty-third session, 23 April – 1 June and 2 July – 10 August 2001</b>, 2001, UN GAOR, 56<sup>th</sup> Sess., UN Doc. A/56/10 (2001).</p>
<p><b>Inter-American Criminal Sentences Convention</b></p>	<p><b>Inter-American Convention on Serving Criminal Sentences Abroad</b>, 1993, O.A.S.T.S. No. 76 (June 9, 1993) (entry into force April 13, 1996).</p>
<p><b>Inter-American Extradition Convention</b></p>	<p><b>Inter-American Convention on Extradition</b>, 1981, O.A.S.T.S. No. 60 (Feb. 25, 1981) (entry into force Mar. 28, 1992).</p>
<p><b>Inter-American Mutual Assistance Convention</b></p>	<p><b>Inter-American Convention on Mutual Assistance in Criminal Matters</b>, 1992, O.A.S.T.S. No. 75 (May 23, 1992) (entry into force April 14, 1996).</p>
<p><b>Nuclear Terrorism Convention</b></p>	<p><b>International Convention for the Suppression of Acts of Nuclear Terrorism</b>, 2005, G.A. Res. 59/290 (LIX), Annex, UN Doc. A/59/766 (April 13, 2005) (entry into force July 7, 2007).</p>
<p><b>Nürnberg Principles</b></p>	<p><b>Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal</b>, 1950, Int'l Law Comm'n, delivered to the General Assembly, UN Doc. A/1316 (1950).</p>

<b>Rabat Declaration</b>	<b>Convention on Extradition and Mutual Legal Assistance in Counter-Terrorism</b> , 2008, annex to the letter dated 14 August 2008 from the Chargé d'affaires a.i. of the Permanent Mission of Morocco to the United Nations addressed to the Secretary-General. A/62/939 – S/2008/567 (08-47023) (not in force).
<b>Rome Statute</b>	<b>Rome Statute of the International Criminal Court</b> , 1998, 2187 U.N.T.S. 90 (entry into force July 1, 2002).
<b>Statutory Limitations Convention</b>	<b>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity</b> , 1970, G.A. Res. 2391 (XXIII) UN Doc. A/7218, 754 U.N.T.S. 73 (Nov. 26, 1968) (entry into force Nov. 11, 1970).
<b>Terrorist Bombings Convention</b>	<b>International Convention for the Suppression of Terrorist Bombings</b> , 1997, G.A. Res. 52/164, UN Doc. A/RES/52/164 (Jan. 12, 1998) (entry into force May 23, 2001).
<b>Torture Convention</b>	<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b> , 1987, G.A. Res. 39/46, annex, UN GAOR, 39 <sup>th</sup> Sess., Supp. No. 51, at 197, UN Doc. A/39/51 (1984) (entry into force June 26, 1987).
<b>UN Charter</b>	<b>Charter of the United Nations</b> , 1945, 1 U.N.T.S. 16 (Oct. 24, 1945).
<b>UN Model Assistance Treaty</b>	<b>United Nations Model Treaty on Mutual Assistance in Criminal Matters</b> , 1990, G.A. Res. 45/117, UN Doc. A/RES/45/117 (Dec. 14, 1990).
<b>UN Convention Against Corruption</b>	<b>United Nations Convention Against Corruption</b> , 2003, G.A. Res. 58/4, UN Doc. A/58/422 (Oct. 31, 2003) (entry into force Dec. 14, 2005).
<b>UN Convention Against Transnational Organized Crime</b>	<b>United Nations Convention Against Transnational Organized Crime</b> , 2001, G.A. Res. 25/55, annex I, UN GAOR, 55 <sup>th</sup> Sess., Supp. No. 49, at 44, UN Doc. A/45/49 (Vol. I) (2001) (entry into force Sept. 29, 2003).
<b>UN Model Extradition Treaty</b>	<b>United Nations Model Treaty on Extradition</b> , 1990, G.A. Res. 45/116, Annex, UN Doc. A/RES/45/49 (Dec. 14, 1990).
<b>World Summit Outcome Document</b>	<b>General Assembly Resolution 60/1: 2005 World Summit Outcome</b> , 2005, G.A. Res. A/RES/60/1, UN Doc. A/RES/60/1 (Oct. 24, 2005).